## ELDER, HARKNESS & BINGHAM, Proprietors.

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## WEEKLY STATE SENTINEL.

PUBLISHED EVERY MONDAY AT Character and Bear to Bear, their proceedings promptly to the Provost

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Charges will be made for inserting the notices of the following Orders, Societies and Associations at the rates | named, to be paid in advance; Military Companies, Order of Odd Fellows, Masonic Orders, Benevolent Societies and Singing Societies. For each notice not exceeding 8 lines 25 cents for each

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all cases, paid in advance. Legal advertisements inserted at the expense of the attorneys ordering, and not delayable for the legal proceed-ings, but collectable at our usual time. Publishers not accomptable for the accuracy of legal advertisements beyoud the amount charged for their publication.
ELDER, HARKNESS & BINGHAM.

Proprietors Indiana State Sentinel. J. M. TH.FORD, President Indianapolis Journal Company

## EXECUTIVE POWER. By Benjamin It. Curtis, of Boston, from the nature of the case, only a declara-

Mass., Late Judge of the Supreme tion of what, at its date, he believed might Court of the United States.

PREFACE.

EXTRACT FROM PRESIDENT LINCOLN'S territory not at present subject even to our PROCLAMATION OF SEPT. 22, 1862.

"That on the fiast day of January, in the year of our Lord one thousand eight hundred and sixty three, all persons held as slaves within any State, or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thencelorward, and forever free; and the Executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to suppress such persons, or any of Stages. them, in any efforts they may make for their actual freedom.

"That the Executive will, on the first day of January aforesaid, by proclamation, designate the States, and parts of States, if any, in which the people thereof respectively shall then be in rebellion against the United States: and the fact that any State, or the people thereof, shall on that day be in good faith represented in the Congress of the United States, by members chosen thereto at elections where a majority of the qualified voters of such State shall have participated, shall, in the absence of strong countervailing testicountry by temperate and well-considered mony, be deemed conclusive evidence that such State, and the people thereof, are not then in rebellion against the United States."

"Understand, I raise no objection against it on legal or constitutional grounds; for, as commander-in-chief of the army and navy in time of war, I suppose I have a right to take any measure which may best subdue the enemy."-President Lincoln to the Chicago Dele-

PROCLAMATION OF SEPT. 24, 1862.

"Whereas, it has become necessary to call into service not only volunteers, but also portions of the militia of the States by draft, in order to suppress the insurrection existing in the United States, and disloyal persons are not adequately restrained by the ordinary processes of law from hindering this measure, should be indifferent to such a momentous and from giving aid and comfort in various ways to the insurrection. Now, therefore, be

"First, That during the existing insurrection, and as a necessary measure for suppressing the same, all rebels and insurgents, their aiders and abettors, within the United States. and all persons discouraging volunteer enlistments, resisting militia drafts, or guilty of any disloyal practice, affording aid and comfort to the rebels against the authority of the United States, shall be subject to martial law, and liable to trial and punishment by court mar-

tial or military commission. "Second. That the writ of habeas corpus is suspended in respect to all persons arrested. or who are now, or hereafter during the rebellion shall be, imprisoned in any fort, camp, arsenal, military prison, or other place of confinement by any military authority, or by the sentence of any court martial or military

"In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed. "Done at the city of Washing, this

to be supposed that the gounds upon which 24th day of September, in the year they rest are open for examination. L. s. of our Lord one thousand eight hundred and sixty-two, and of the However this may be, these are subjects in which the people have vast concern. It is independence of the United States their right, it is their duty to themselves and the eigety-seventh. their posterity, to examine and to consider ABRAHAM LINCOLN. and to decide upon them; and no citizen is faithful to his great trust if he fail to do so,

"By the President:

WM. H. SEWARD, Sec'y of State."

ORDERS OF THE SECRETARY OF WAR, PRO-MULGATED SEPT. 26th, 1862.

"First. There shall be a Provost Marshal the questions themselves, or to the men who General of the War Department, whose have made them. headquarters will be at Washington, and who It has been attempted by some partisan will have the immediate supervision, control journals to raise the cry of "disloyalty" against

and management of the corps. any one who should question these executive "Second. That there will be appointed in acts. each State one or more special Provost Mar- But the people of the United States know shals, as necessity may require, who will re- that loyalty is not subserviency to a man, or port and receive instructions and orders from to a party, or to the opinions of newspapers; the Provost Marshal General of the War De- but that it is a honest and wise devotion to

"Third. It will be the duty of the special the great principles which our constitution of

## DAILY STATE SENTINEL.

VOLUME X.

Marshal General.

Provost Marshal to arrest all deserters.

whether regulars, volunteers, or militia, and

send them to the nearest military commander

or military post, where they can be cared for

are authorized to call on any available mili

tary force within their respective districts, or

else to employ the assistance of citizens, con-

stables, sheriffs, or police officers, so far as

may be necessary under such regulations as

may be prescribed by the Provost Marshal

General of the War Department, with the

service will be paid on duplicate bills certified

by the special Provost Marshals, stating time

and nature of service, after examination and

approval by the Provost Marshal General.

"Fifth. Necessary expenses incurred in this

"Sixth. The compensation of special Pro-

vost Marshals will be --- dollars per month,

will be refunded on bills certified under oath

and approved by the Provost Marshal General.

"Seventh. All appointments in this service

"Eighth. All orders heretofore issued by

the War Department, conferring authority

upon other officers to act as Provost Marshals.

"By order of the Secretary of War,

EXECUTIVE POWER.

No citizen can be insensible to the vast im-

portance of the late proclamations and orders

of the President of the United States. Great

differences of opinion already exist concern-

ing them. But whatever those differences of

opinion may be, upon one point all must agree.

They are assertions of transcendent executive

from his proposed course of action.

decree and execute them.

In like manner, it is not to be doubted by

his action on his recent proclamations and

orders shall arrive, it will be in conformity

with his own wishes, that he should have

those lights which are best elicited in this

public discussion; discussion, not only of the

he makes known to the people of the United

ident must have been aware, when he issued

toward- unanimity upon their subjects could

settled and most energetic popular sentiment

cannot be doubted, we may justly believe

that executive action has been postponed,

among other reasons, for the very purpose of

and the orders of the Secretary of War, in-

tended to carry it into practical effect, though

their operation is immediate, so far as their

express declarations can make them so, they

have not yet been practically applied to such

an extent, or in such a way, as not to allow it

according to the best lights he has, or can ob-

tain. And if, finally, such examination and

consideration shall end in diversity of opinion,

And, in reference to the last proclamation,

allowing time for such discussion.

what so deeply concerns themselves.

"L. THOMAS, Adjutant General."

will be subject to be revoked at the pleasure

approval of the Secretary of War.

of the Secretary of War.

INDIANAPOLIS. IND., THURSDAY MORNING, NOVEMBER 13, 1862.

and sent to their respective regiments; te arrest upon the warrant of the Judge Advocate, all disloyal persons subject to arrest under the orders of the War Department; to inquire into and report treasonable practices, seize stolen or embezzled property of the Govern-ment, detect spies of the enemy, and perform loyalty is due to that will. Our obedience is domestic condition of its inhabitants, shall bedue to those laws; and he who would induce come null and void, at a certain future date. submission to other laws, springing from by reason of the criminal conduct of a govsuch other duties as may be enjoined upon them by the War Department, and report all sources of power not originating in the peo- erning majority of its people. "Fourth. To enable special Provost Marshals to discharge their duties efficiently, they

apology-for failure to oppose usurpation of disloyal or otherwise, that the proclamation power, which, if acquiesced in and established, is to operate, if at all; and it is to operate to must be fatal to a free Government. set them free, in spite of the valid laws of

The war in which we are engaged is a just | their States, because a majority of the legal preme law of our part of the land?

ties, inconsistent, in my opinion, with the no longer to have any operation. preservation of any attachments to political The second proclamation, and the orders of party, caused me to withdraw from all such the Secretary of War, which follow it, place connections, many years ago, and they have every citizen of the United States under the listen to the exhortations, now so frequent, to President. They declare and define new divest myself of party ties, and disregard offenses, not known to any law of the United party objects, and act for my country. I States. They subject all citizens to be imhave nothing but my country for which to act, prisoned upon a military order, at the pleasin any public affair; and solely because I have ure of the President, when, where, and so that yet remaining, and know not but it may long as he, or whoever is acting for him, may be possible, from my studies and reflections, choose. They hold the citizen to trial before to say something to my countrymen which a military commission appointed by the Presmay aid them to form right conclusions in ident, or his representative, for such acts or these dark and dangerous times, I now, re- omissions as the President may think proper

own powers, as a more mature, and possibly a more enlightened consideration may produce.

desirous to do his duty to the country, under the best lights possible, that when the time for

against, may imperatively demand instant and | For while it has been generally, and so far as tive has assumed the high responsibility of tive, and consequently that Congress alone such a necessary exercise of mere power, he can prohibit the courts from issuing the writ. ment of the Government which alone has the cases, suspend or deny the privilege which rightful anthority to grant it :- an indemnity the writ was designed to secure. I am not measures as he shall deem necessary and ex- which should be always sought and accorded aware that any one has attempted to show. pedient. Although Congress will have been upon the clearest admission of legal wrong, that under this grant of power to suspend in session nearly thirty days before any exec- finding its excuse in the exceptional case "the privilege of the writ of habeas corpus." utive action is proposed to be taken on this which made that wrong absolutely necessary the President may annul the laws of States, subject of emancipation, it can hardly be sup- for the public safety.

and to every person in it; or to great tracts of stitution. No such attempt has been, and I and wherever and to whomsoever the Presi- power has ever been suggested, save that dedent, or any subordinate officer whom he may scribed by the President himself, as belonging of the United States, and erect tribunals, and master of the country for the time being. employ, may choose to apply them.

operation of the proclamation of emancipa- enemy."

it must be accepted as justly attributable to personal freedom.

This proclamation, then, by an executive ment, intended to carry it into practical efdecree, proposes to repeal and annul valid fect, are manifest assumptions by the Presi- States should be placed in the hands of the their purpose and effect may be solely to re-State laws which regulate the domestic rela- dent of powers delegated to the Congress and chief civil magistrate. But the powers of cruit or support his armies, or to weaken the

government embodies, by which alone that this executive decree holds out this proposed safety and welfare can be secured. And, repeal of State laws as a threatened penalty when those principles are put in jeopardy, for the continuance of a governing majority every true loyal man must interpose, accord- of the people of each State, or a part of a ing to his ability, or be an unfaithful citizen. State, in rebellion against the United States. This is not a Government of men. It is a So that the President hereby assumes to him-Government of laws. And the laws are re- self the power to denounce it as a punishment quired by the people to be in conformity with against the entire people of a State, that the their will, declared by the Constitution. Our valid laws of that State which regulate the

ple, but in casual events, and in the mere This penalty, however, it should be obwill of the occupants of places of power, does served, is not to be inflicted on those persons not exhort us to lovalty, but to a desertion of who have been guilty of treason. The freedom of their slaves was already provided for That they whose principles he questions by the act of Congress, recited in a subsehave the conduct of public affairs; that the quent part of the proclamation. It is not. times are most critical; that public unanimity | therefore, as a punishment of guilty persons, is highly necessary; while these facts afford that the commander-in-chief decrees the freesufficient reasons to restrain all opposition dom of the slaves. It is upon the slaves of upon any personal or party grounds, they can loyal persons, or from those who, from their afford no good reason-hardly a plausible tender years, or other disability, cannot be either

and necessary war. It must be prosecuted voters do not send representatives to Congress. with the whole force of this Government till Now it is easy to understand how persons the military power of the South is broken, held to service under the laws of these States. and they submit themselves to their duty to and how the army and the navy, under the obey, and our right to have obeyed, the Con- orders of the President, may overturn these stitution of the United States, as "the su- valid laws of the States, just as it easy to impreme law of the land." But with what agine that any law may be violated by physical sense of right can we subdue them by arms force. But I do not understand it to be the to obey the Constitution as the supreme law purpose of the President to incite a part of of their part of the land, if we have ceased the inhabitants of the United States to rise in to obey it, or failed to preserve it, as the su- insurrection against valid laws; but that by virtue of some power which he possesses, he

to decree to be offenses; and they subject bim

the nature and extent of the powers asserted judicial or legislative officer.

invoked to help twenty millions of the white jection to it on legal or constitutional grounds; race to a sere the rightful authority of the for, as commander-in-chief of the ormy and Constitution and laws of their country, over navy, in time of war, I suppose I have a right those who refuse to obey them. But I do see to take any measure which may best subdue the that this proclamation asserts the power of the enemy." This is a clear and frank declaration of the President respecting the origin and ex-I do not yet perceive how it is that my tent of the power he supposes himself to posneighbors and myself, residing remote from sess; and, so far as I know, no source of these armies and their operations, and where all the powers other than the authority of commander- governmental powers, and the immunity of property of citizens which do not exist in laws of the land may be enforced by consti- in-chief in time of war, has ever been suggested. stitutional means, should be subjected to the There has been much discussion concerning possibility of military arrest and imprisonment, the question whether the power to suspend and trial before a military commission, and the "privilege of the writ of habeas corpus," punishment at its discretion for offences un- is conferred by the Constitution on Congress. known to the law; a possibility to be converted or on the President. The only judicial deinto a fact at the mere will of the President, cisions which have been made upon this quesor of some subordinate officer, clothed by him tion have been adverse to the power of the with this power. But I do perceive that this President. Still, very able lawyers have endeavored to maintain-perhaps to the satis-I am quite aware, that in times of great faction of others-have maintained, that the public danger, unexpected perils, which the power to deprive a particular person of "the legislative power have failed to provide privilege of the writ," is an executive power, vigorous executive action, passing beyond the I know, universally admitted, that Congress limits of the laws; and that, when the execu- alone can suspend a law, or render it inoperamay justly look for indemnity to that depart- yet that the executive might, in particular But I find no resemblance between such the United States, erect military commissions exceptional cases and the substance of these to try and punish them, and then, by a sweepproclamations and these orders. They do not ing decree, suspend the writ of habeas corous relate to exceptional cases—they establish a as to all persons who shall be "arrested by system. They do not relate to some instant any military authority." I think he would emergency—they cover an indefinite future. make a more bold than wise experiment on They do not seek for excuses-they assert the credulity of the people, who should atpowers and rights. They are general rules tempt to convince them that this power is the United States; that, by military edicts, he whatever in his discretion might be necessary of action, applicable to the entire country, found in the habeas corpus clause of the Concountry, and to the social condition of their think none such will be made. And therepeople; and they are to be applied whenever fore I repeat, that no other source of this

to him as commander-in-chief. Certainly these things are worthy of the It must be obvious to the meanest capacity, most deliberate and searching examination. that it the President of the United States has Let us, then, analyze these proclamations an implied constitutional right, as commanderand orders of the President; let us compre- in-chief of the army and navy, in time of hend the nature and extent of the powers war, to disregard any one positive prohibition they assume. Above all, let us examine that of the Constitution, or to exercise any one portentous cloud of the military power of the power not delegated to the United States by President, which is supposed to have over- the Constitution, because, in his judgment, he come us and the civil liberties of the country. may thereby "best subdue the enemy," he has pursuant to the will of the people, ordained the same right, for the same reason, to disrein the Constitution because we are in a state of gard each and every provision of the Constitution, and to exercise all power needful, in

And first, let us understand the nature and his opinion, to enable him "best subdue the tion, as it is termed; then let us see the char- It has never been doubted that the power acter and scope of the other proclamation, to abolish slavery within the States was not and the orders of the Secretary of War, de- delegated to the United States by the Constisigned to give it practical effect, and having tution, but was reserved to the States. If the done so, let us examine the asserted source of President, as commander-in-chief of the army and navy in time of war, may, by an execu-The proclamation of emancipation, if taken tive decree, exercise this power to abolish to mean what in terms it asserts, is an execu- slavery in the States, which power was retive decree, that on the first day of January served to the States, because he is of the next, all persons held as slaves, within such opinion that he may thus "best subdue the States or part of States as shall then be des enemy," what other power, reserved to the ignated, shall cease to be lawfully held to ser- States, or to the people, may not be exercised vice, and may, by their own efforts, and with by the President, for the same reason, that he the aid of the military power of the United is of opinion he may thus best subdue the States, vindicate their lawful right to their enemy? And if so, what distinction can be made between powers not delegated to the The persons who are the subjects of this United States at all, and powers which, proclamation are held to service by the laws though thus delegated, are conferred by the of the respective States in which they reside, Constitution upon some department of the enacted by State authority, as clear and un- government other than the executive? Inquestionable, under our system of government, deed, the proclamation of September 24, 1862, as any law passed by any State on any subject. followed by the orders of the War Depart- wise that the powers of the commander-in- may be made actually operative; obedience to

affix to each some appropriate and not cruel the Constitution had provided that a conor unusual punishment. But this proclama- mander-in-chief should be appointed by Contion and these orders create new offenses, not gress, his powers would have been the same known to any law of the United States. as the military powers of the President now "Discouraging enlistments," and "any disloyal are. And what would be thought by the practice," are not offenses known to any law American people of an attempt by a general-of the United States. At the same time they in-chief, to legislate by his decrees, for the may include, among many other things, acts people and the States. which are offenses against the laws of the Besides, all the powers of the President are United States, and, among others, treason, executive merely. He cannot make a law. Under the Constitution and laws of the United He cannot repeal one. He can only execute States, except in cases arising in the land and the laws. He can neither make, nor suspend,

gree and kind of punishment, instead of the out of this great and desperate struggle?

law of Congress fixing the penalty of the The military power of eleven of these States

naval force, every person charged with an of- nor alter them. He cannot even make an fense is expressly required to be proceeded article of war. He may govern the army, against, and tried by the judiciary of the either by general or special orders, but only United States and a jury of his peers; and he in subordination to the Constitution and laws is required by the Constitution to be punished, of the United States, and the articles of war in conformity with some act of Congress ap- enacted by the legislative power. plicable to the offense proved, enacted before The time has certainly come when the peoits commission. But this proclamation and ple of the United States must understand, these orders remove the accused from the in- and must apply those great rules of civil librisdiction of the judiciary; they substitute a erty, which have been arrived at by the selfreport, made by some deputy provost mar- devoted efforts of thought and action of their shal, for the presentment of a grand jury, ancestors, during seven hundred years of they put a military commission in place of a struggle against arbitrary power. If they fail judicial court and jury required by the Con- to understand and apply them, if they fail to stitution; and they apply the discretion of the hold every branch of their government stead-com clission and the President, fixing the de-

It no lodger remains to be suggested, that their condition? What is to be our condition? if the ground of action announced by the Are the great principles of free govern-President be tenable, he may, as commander- ment to be used and consumed as means of in-chief of the army and navy, use powers war? Are we not wise enough and strong not delegated to the United States by the enough to carry on this war to a successful Constitution; or may use powers by the Con- military end, without submitting to the loss of stitution exclusively delegated to the legisla- any one great principle of liberty? We are tive and the judicial departments of the gov- strong enough. We are wise enough, if the ernment. These things have been already people and their servants will but understand I am a member of no political party. Du- proposes to annul those laws, so that they are done, so far as the proclamations and orders and observe the just limits of military power.

of the President can affect them. It is obvious, that if no private citizen is these. There is military, and there is marprotected in his liberty by the safeguards tial law. Military law is that system of laws thrown around him by the express provisions enacted by the legislative power for the govof the Constitution, but each and all of those ernment of the army and the navy of the safeguards may be disregarded, to subject him | United States, and of the militia when called to military arrest upon the report of some into the actual service of the United States. deputy provost marshal, and imprisonment at It has no control whatever over any person the pleasure of the President, and trial before or any property of any citizen. It could not a military commission, and punishment at its even apply to the teamsters of an army, save discretion, because the President is of the by force of express provisions of the laws of opinion that such proceedings "may best sub- Congress, making such persons amenable due the enemy," then all members of either thereto. The persons and the property of house of Congress and every judicial officer private citizens of the United States, are as is liable to be proceeded against as a "disloyal absolutely exempted from the control of miliperson," by the same means and in the same tary law as they are exempted from the conway. So that, under this assumption con- trol of the laws of Great Britain. cerning the implied powers of the President | But there is also Martial law. What is as commander-in-chief in time of war, if the this? It is the will of a military commander. President shall be of the opinion that the ar- operating without any restraint, save his judgrest and incarceration, and trial before a mil- ment, upon the lives, upon the property, upon itary commission of a judge of the United the entire social and individual con States, for some judicial decision, or of one or all over whom this law extends. But, under for words spoken in debate, is "a measure whom does such low extend? which may best subdue the enemy," there is Will any one be bold enough to say, in then conferred on him by the Constitution view of the history of our ancestors and our-

This power is certainly not found in any country, or over any defined geographical express grant of power made by the Constitu- part thereof, save in connection with some tion to the President, nor even in any delega- particular military operations which he is cartion of power made by the Constitution of the rying on there? Since Charles I. lost his United States to any department of the gov- head, there has been no king in England who ernment. It is claimed to be found solely in | could make such law in that realm. And the fact that he is the commander-in-chief of where is there to be found, in our history, or its army and navy, charged with the duty of our constitutions, either State or national, any subduing the enemy. And to this end, as he | warrant for saying, that a President of the understands it, he is charged with the duty of United States has been empowered by the using, not only those great and ample powers | Constitution to extend martial law over the which the Constitution and laws and the self- whole country, and to subject thereby to his devotion of the people in executing them, military power, every right of every citizen? have placed in his bands, but charged with He has no such authorty. the duty of using powers which the people In time of war, a military commander, have reserved to the States, or to themselves; whether he be the commander-in-chief, or and is permitted to break down those great one of his subordinates, must possess and exconstitutional safrguards of the partition of creise powers both over the persons and the the citizen from mere executive control, which time of peace. But he possesses and exer-

The necessary result of this interpretation gation from their authority, but in virtue thereof the Constitution, is, that, in time of war, of, and in strict subordination thereto. The the President has any and all power, which general who moves his army over private he may deem it necessary to exercise, to sub- property in the course of his operations in the due the enemy; and that every private and field, or who impresses into the public service personal right of individual security against means of transportation, or subsistence, to enmere executive control, and every right re- able him to act against the enemy, or who served to the States or the people, rests merely seizes persons within his lines as spies, or deupon executive discretion.

stroys supplies in immediate danger of falling But the military power of the President is into the hands of the enemy, uses authority derived solely from the Constitution; and it is unknown to the Constitution and laws of the as sufficiently defined there, as his purely civil United States in time of peace; but not unpower. These are its words: "The President known to that Constitution and those laws in shall be the Commander-in-Chief of the army time of war. The power to declare war, in- of such questions, or of the vast practical efand navy of the United States, and of the cludes the power to use the customary and fects dependent on them. militia of the several States, when called into necessary means effectually to carry it on. As Congress may institute a state of war, it the actual service of the United States."

This is his military power. He is the gen- may legislate into existence and place under eral-in-chief; and as such, in prosecuting war, executive control the means for its prosecuto do within the sphere of their actual opera- legislation, not the commander-id-chief only. in this country, of private safety and of public the President may annul the laws of States, tions, in subordination to the laws of their country, but every commander of an expedition, or of create new offences unknown to the laws of from which alone they derive their authority.\* a military post, is lawfully empowered by the When the Constitution says that the Presi- Constitution and laws of the United States.

dent shall be the commander-in-chief of the to do whatever is necessary, and is sanctioned

tary enterprise may, in his honest judgment,

the field, when he makes laws to govern their

army and navy of the United States, and of by the laws of war, to accomplish the lawful the militia of the several States, when called objects of his command. But it is obvious into the actual service of the United States, that this implied authority must find early does it mean that he shall possess military limits somewhere. If it were admitted that a power and command over all citizens of commanding general in the field might do may control all citizens, as if enlisted in the to subdue the enemy, he could levy contribuarmy or navy, or in the militia called into the tions to pay his soldiers; he could force conactual service of the United States? Does it scripts into his service; he could drive out of mean that he may make himself a legislator, the entire country all persons not desirous to of political subjects. I have confidence in the and enact penal laws governing the citizens aid him-in short, he would be the absolute create offices to enforce his penal edicts upon No one has ever supposed-no one will now citizens? Does it mean that he may, by a undertake to maintain-that the commanderprospective executive decree, repeal and an- in-chief, in time of war, has any such lawful of such powers must be intrusted to subordinul the laws of the several States, which re- authority as this. spect subjects reserved by the Constitution What, then, is his authority over the perfor the exclusive action of the States and the sons and property of citizens? I answer, people? The President is the commander-in-chief of the army and navy, not only by force has military power and command; that over of the Constitution, but under and subject to all persons and property within the sphere of the Constitution, and to every restriction his actual operations in the field, he may lawtherein contained, and to every law enacted fully exercise such restraint and control as the by his authority, as completely and clearly as successful prosecution of his particular milithe private in his ranks.

He is general-in-chief; but can a general-in- absolutely require; and upon such persons as chief disobey any law of his own country? have committed offenses against any article of tion of power which is to be consider When he can, he superadds to his right as war, he may, through appropriate military commander the powers of a usurper; and that tribunals, inflict the punishment prescribed by is military despotism. In the noise of arms law. And there his lawful authority ends. have we become deaf to the warning voices The military power over citizens and their of our fathers, to take care that the military property is a power to act, not a power to shall always be subservient to the civil powers? prescribe rules for future action. It springs Instead of listening to these voices, some per- from present pressing emergencies, and is sons now seem to think that it is enough to limited by them. It cannot assume the funcsilence objection, to say, true enough, there is tions of the statesman or legislator, and make no civil right to do this or that, but it is a provision for for future or distant arrangemilitary act. They seem to have forgotten ments, by which persons or property may be that every military act is to be tested by the made subservient to military uses. It is the Constitution and laws of the country under physical force of an army in the field, and whose authority it is done. And that under may control whatever is so near as to be actthe Conssitution and laws of the United ually reached by that force, in order to re-States, no more than under the Government move obstructions to its exercise. of Great Britain, or under any free or any But when the military commander controls settled government, the mere authority to the persons or property of citizens, who are command an army, is not an authority to dis- beyond the sphere of his actual operations in obey the laws of the country.

The framers of the Constitution thought it conduct, he become a legislator. Those laws chief of the military forces of the United them may be enforced by military power: peration of the decree.

It is a clear and undoubted prerogative of or varied by being conferred upon the same tending. But he is a legislator still; and The next observable characteristic is, that Congress alone, to define all offenses, and to officer, who has important civil functions. If whether his edicts are clothed in the form of

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being destroyed-what then? What is to be

What, then, are those limits? They are

ever name they may be called, they are laws. If he have the legislative power, conferred on him by the people, it is well. If not, he He has no more lawful sutherity to hold a the oitisens of the entire country, catalda a the sphere of his actual operations in the field, amenable to his military edicts, than he has to hold all the property of the country subject to his military requestions. He is not the military commander of the country of the Chicago of the United States, but of its soldiers.

proclamations, or of military orders, by what

Apply these principles to the proclamations and orders of the President. They are not designed to meet an existing emergency in some particular military operation in the field; they prescribe future rules of action touching the persons and property of citizens. They are to take effect, not merely within the scope of military operations in the field, or in their neighborhood, but throughout the entire country, or great portions thereof. Their subject matter is not military offenses, or military relations, but civil offenses, and domestic relations; the relation of master and servant; the offenses of "disloyalty or treasonable practices." Their purpose is not to meet some existing and instant military emergency. but to provide for distant events, which may or may not occur; and whose connections, if they should coincide with any particular military operations, are indirect, remote, casual and possible merely.

It is manifest, that in proclaiming these edicts, the President is not acting under the authority of military law; first, because military law extends only over the persons actually enlisted in the military service; and second because these persons are governed by laws enacted by legislative power. It is equally manifest that he is not acting under that implied authority which grows out of particular actual military operations; for these executive decrees do not spring frem the special emergencies of any particular military operations, and are not limited to any field in which any

such operations are carried on. Whence, then, do these edicts spring? They spring f om the assumed power to extend martial law over the whole territory of the United States; a power, for the exercise of which, by the President, there is no warrant whatever in the Constitution: a power which no free people could confer upon an executive officer, and remain a free people. For it would make him the absolute master of their lives, their liberties, and their property. with power to delegate his mastership to such satraps as he might select, or as he might be imposed on his credulity, or his fears. Amidst the great dangers which encompass us, in our struccles to encounter them, in our natural eagerness to lay bold of efficient means to acplish our vast labors, let us beware how we borrow weapons from the armory of arbitrary power. They cannot be wielded by the hands of a free people. Their blows will finally fall upon themselves.

Distracted councils, divided strength, are the very earliest effects of an attempt to use them. What lies beyond, no patriot is now willing to attempt to look upon.

A leading and influential newspaper, while expressing entire devotion to the President. and approbation of his proclamation of emancipation, says: "The Democrats talk about 'ancenstitutional acts.' Nobody pretends that this act is constitutional, and nobody cares whether it is or not."

I think too well of the President, to believe he has done an act involving the lives and fortunes of millions of human beings, and the entire social condition of a great people, withcan extend such law as that over the entire out caring whether it is conformable to that Constitution which he has, many times, sworn

Among all the causes of alarm which now distress the public mind, there are few more terrible to reflecting men, than the tendency to lawlessness which is manifesting itself in so many directions. No stronger evidence of this could be afforded, than the open declaration of a respectable and widely circulated journal, that "nobody cares" whether a great public act of the President of the United States is in conformity with, or is subversive of the supreme law of the land,-the only basis upon which the government rests; that our public affairs have become so desperate, and our ability to retrieve them by the use of honest means is so distru-ted, and our willingness to use other means so undoubted, that our great public servants may themselves break the fundamental laws of the country, are at once both the end and the means of cises such powers, not in spite of the Constitu- and become usurpers of vast powers not intion, and laws of the United States, or in derotrusted to them, in violation of their solemn oaths of office; and "nobody cares"

It is not believed that this is just to the people of the United States. They do care, and the President cares, that he and all other public servants should obey the Constitution. Partisan journals, their own honest and proper desire to support the President-on whose wisdom and firmness they rely to relieve their country from its evils and dangers-and the difficulties which the mass of the people encounter in forming opinions on questions of constitutional law, may prevent them, for a limited time, from arriving at a just judgment

But the people of the United States do not expect national concord to spring from usurpation of power; or national security from the violation of those great principles of public can do what generals in the field are allowed tion. And, in time of war without any special liberty, which are the only possible foundation, order. Their instincts demand a purer and more comprehensive statesmanship than that which seizes upon unlawful expedients, because they may possibly avert for the moment some threatening danger at the expense of the violation of great principles of free gov-ernment, or of the destruction of some necessary safeguard of individual security.

It is a subject of discussion in the public journals whether it is the intention of the Executive to use the powers asserted in the last proclamation, and in the orders of the purity and the patriotism, both of the President and of the Secretary of War. I fear 10 such present application of this proclamation and these orders by them. But the execution nate agents, and it is of the very essence of arbitrary power that it should be in hands which can act promptly and efficiently, and unchecked by forms. These great powers must be confided to persons actuated by party. citizen, actuated by a desire to commend the

vigilance to their employers, and by a blan-dering and stupid zeal in their service.

But it is not this or that particular applica-tion of power which is to be considered. It is the existence of the power itself, and the uses of which it is susceptible, while following out the principle on which it has been assumed.

The uses of power, even in despotic motarchies, are more or less coptrolled by usages and customs, or in other words, by public opinion. In good hands, and in favorable times, despotic power is not commonly allowed to be felt to be oppressive; and, always, the forms of a free government, which had once existed, so far as is practicable, are carefully and speciously preserved. But a wise peo does not trust its condition and rights to the happy accident of favorable times or good hands. It is jealous of power. It knows that of all earthly things, it is that thing most likely to be abused; and when it affects a nation most destructive by its abuse. They wil rouse sdemselves to consider what is the power claimed; what is its origin; what its extent; what uses may be made of it in dangerous times, and by men likely to be produced in such times;—and while they will trust their public servants, and will pour out their deares blood like water to sustain them in their honest measures for their country's salvation, they will demand of these sservant obedience to the will, as expressed in the fundamental laws of

There is nothing in the character or con-I do not propose to discuss the question to such punishment as such military commiswhether the first of these proclamations of sion may be pleased to inflict. They create these proclamations, and there is nothing in the President, if definitively adopted, can new offices, in such number, and whose occuthe state of the country, which should prevent have any practical effect on the unhappy race | pants are to receive such compensation as the of persons to whom it refers; nor what its President may direct; and the holders of these a candid and dispassionate discussion either of their practical tendencies, or of the source practical consequences would be, upon them offices, scattered through the States, but with and upon the white population of the United one chief inquisitor at Washington, are to inof power from whence they are supposed to States, if it should take effect; nor through spect and report upon the loyalty of the citi- more members of either house of Congress the Constitution of the United States, over what seenes of bloodshed, and worse than zens, with a view to the above described pro-The President, on all occasions, has manibloodshed, it may be, we should advance to ceedings against them, when deemed suitable fested the strongest desire to act cautiously, wisely, and for the best interests of the counthose final codditions; nor even the lawfulness, by the central authority. try. What is commonly called his proclamain any Christian or civilized sense, of the use | Such is a plain and accurate statement of the rightful power so to proceed against such | selves, that the President of the United States tion of emancipation, is, from its terms and of such means to attain any end. If the entire social condition of nine mil- in these executive proclamations, lions of people has, in the providence of God, What is the source of these vast powers? been allowed to depend upon the executive Have they any limit? Are they derived prove expedient, within yet undefined territorial limits, three months hence, thirty days decree of one man, it will be the most stu- from, or are they utterly inconsistent with. pendous fact which the history of the race the Constitution of the United States? after the meeting of next Congress, and within has exhibited. But, for myself, I do not yet The only supposed source or measure of military control. Of course such an executive perceive that this vast responsibility is placed | these vast powers, appears to have been desupon the President of the United States. I ignated by the President, in his reply to the declaration as to his future intentions, must be do not yet see that it depends upon his exec- address of the Chicago clergymen, in the folunderstood by the people to be liable to be utive decree, whether a servile war shall be lowing words :- "Understand, I raise no obmodified by events, as well as subject to such changes of views, respecting the extent of its

In April, 1861, the President issued his proclamation, declaring he would treat as pirates all persons who should cruise, under the authority of the so-called Confederate States, against the commerce of the United But subsequent events induced him, with general acquiescence, to exchange them as prisoners of war. Not from any fickleness of purpose, but because the interests of the country imperatively demanded this departure any one who esteems the President honestly

practical consequences of the proposed measures, but of his own constitutional power to The Constitution has made it incumbent on the President to recommend to Congress such

posed that this pro lamation was intended to be a recommendation to them. Still, in what the President may perhaps regard as having some flavor of the spirit of the Constitution. States his proposed tuture executive action; certainly not expecting or desiring that they proposal, or should fail to exercise their best judgments, and afford their best counsels upon Our public affairs are in a condition to render unanimity, not only in the public councils of the nation, but among the people themselves, of the first importance. But the Pres-

these proclamations, that nothing approaching be attained, among the people, save through their public discussion. And as his desire to act in accordance with the wisest and best

tions of their people. Such is the mode of to the judicial department of the government. commander-in-chief are in no degree enhanced power of the enemy with whom he is conthe safety and welfare of our country, and to operation of the decree.